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Election of judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Letter dated 18 August 2005 from the Permanent Representative of Liechtenstein to the United Nations addressed to the President of the General Assembly

I have the honour to refer to the upcoming election of ad litem judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, to be held on 24 August 2005 in the General Assembly. In the light of unduly protracted procedures at similar elections in the past, Liechtenstein would like to suggest that the procedure for the election of ad litem judges, as suggested by the Secretary-General in his memorandum (A/59/887), be applied by the General Assembly with a slight modification.

Given that the statute of the International Tribunal, as amended, provides in article 13 ter that "The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected", our past practice as reflected in paragraph 18 of the memorandum of the Secretary-General, can be questioned with regard to both its compatibility with the statute and its practicability. Paragraph 18 reads as follows:

> "18. If, in the first ballot, more than 27 candidates obtain an absolute majority of votes, a second ballot will be held on all candidates, and balloting will continue at the same meeting, if and as necessary, until 27 candidates, and no more, obtain an absolute majority. In any such case, each elector may vote, both in the first ballot and in any subsequent ballot, for 27 candidates."

If more than 27 candidates obtain an absolute majority of votes, that provision in effect leads to a situation where none of the candidates who receive an absolute majority of votes are declared elected. This is clearly in contravention of the wording of article 13 ter of the statute. Liechtenstein would therefore like to suggest that, in such a scenario, as many candidates as possible are declared elected, that is, those 27 candidates which receive the highest number of votes.

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Furthermore, it should be noted that the statute requires that a list of at least 54 candidates is submitted to the General Assembly, which would make it very unlikely that more than 27 candidates receive an absolute majority. During these elections, however, States can only choose among 34 candidates or less, which makes it in fact rather likely that more than 27 will receive an absolute majority.

Therefore, we would like to suggest the following wording to replace paragraph 18 of the memorandum of the Secretary-General:

> "18. If, in the first ballot, more than 27 candidates obtain an absolute majority of votes, those 27 candidates having obtained the highest number of votes shall be considered elected. In the event of a tie for a remaining seat, there shall be a restricted ballot limited to those candidates who have obtained an equal number of votes."

We respectfully ask you to circulate this proposal as a document of the General Assembly. We hope that, despite the short time left until the elections, the Member States will find this suggestion useful and be able to agree to it.

(*Signed*) Christian **Wenaweser**
Ambassador
Permanent Representative